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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,680	11/25/2003	Brian Gerrard Devlin	CL/V-32782A	8875
31781	7590	12/12/2007	EXAMINER	
CIBA VISION CORPORATION PATENT DEPARTMENT 11460 JOHNS CREEK PARKWAY DULUTH, GA 30097-1556			VARGOT, MATHIEU D	
			ART UNIT	PAPER NUMBER
			1791	
			MAIL DATE	DELIVERY MODE
			12/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/723,680	DEVLIN ET AL.	
	Examiner	Art Unit	
	Mathieu D. Vargot	1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 14 September 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stockinger et al (col. 7, line 59 through col. 8, line 61) as characterized in the instant specification at page 14, lines 6-10 in view of the admitted prior art set forth in instant specification at page 2, line 22 through page 3, line 5 and British Patent 1,177,100 (see page 2, lines 5-7 and lines 95-96; also, at page 6, Example 7, Test 7 teaches Mn-citrate) essentially for reasons of record noting the following. While the claims have been amended to recite "water-soluble" for the acid or salt, it is noted that Mn-citrate is at least sparingly soluble, so that it would be soluble if used in small enough concentrations. Also, Mn-citrate is commonly used in food preparation as a preservative and apparently has no toxicity when used in small enough amounts. Hence, there would appear to be no problem concerning its use for a medical device as it would be termed "biocompatible".

2. Applicant's arguments filed September 14, 2007 have been fully considered but they are not persuasive. Applicant submits that the manganese citrate of British –100 would not be applicable in the instant product, but such is not persuasive. First of all, the salt is known to be **sparingly soluble, not insoluble** in water or aqueous solution. Hence, dependent on concentration, it is submitted that it would qualify as a water-soluble salt as set forth in the amended claims. Also, claim 1 is directed to making a

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medical device, not necessary an ophthalmic device. Hence, it is respectfully submitted that the fact that Mn-citrate can cause redness and irritation of the eyes is not necessarily probative. Also, the exact concentration with which it is used surely accounts for these properties, since it is a commonly used as a food preservative and certainly is not toxic. While applicant is entitled to be his own lexicographer, he cannot define terms in a manner that would not be consistent with their general use. Generally, biocompatibility means that an agent is not toxic to cells or living tissues at a certain level, not the specific definition disclosed and argued by applicant—ie, particularly as pertains to the ocular environment. Also, The MSDS sheet supplied by applicant does not stipulate how Mn-citrate would affect the eyes if used in a small amount mixed in a polymer—hence, there is no indication that the salt would not be biocompatible as set forth in the instant specification.

3. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mathieu D. Vargot whose telephone number is 571 272-1211. The examiner can normally be reached on Mon-Fri from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson, can be reached on 571 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Vargot
December 8, 2007

M. Vargot
Mathieu D. Vargot
Primary Examiner
Art Unit 1791

12/8/07